

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

**JILL DILLARD, JESSA SEAWALD,
JINGER VUOLO, and JOY DUGGAR,**

PLAINTIFFS

VS.

NO. 5:17-cv-5089-TLB

**CITY OF SPRINGDALE, ARKANDAS;
WASHINGTON COUNTY, ARKANSAS;
KATHY O'KELLEY, in her individual
and official capacities; RICK HOYT,
in his individual and official capacities;
STEVE ZEGA , in his official capacity;
BAUER PUBLISHING COMPANY, L.P.;
BAUER MAGAZINE L.P.; BAUER
MEDIA GROUP, L.P.; BAUER, INC.;
HENRICH BAUER NORTH AMERICA, INC.;
BAUER MEDIA GROUP USA, LLC; and
DOES 1-10, inclusive**

DEFENDANTS

**WASHINGTON COUNTY DEFENDANT'S RESPONSE
TO PLAINTIFFS' MOTION TO AMEND COMPLAINT**

The Plaintiffs filed their original Complaint in this case on May 18, 2017. Doc. # 1. Thereafter, the Defendants filed respective motions to dismiss. After a hearing, the Court granted in part and denied in part the motions to dismiss. Doc. # 62. With respect to the Separate Washington County Defendants, the Court dismissed the claim(s) against Washington County, in all official capacities, but denied dismissal to Rick Hoyt, in his individual capacity. *Id.* Defendant Hoyt then filed a notice of his interlocutory appeal of the denial of qualified immunity. He also sought, and was granted (along with the individual Springdale Defendants), a stay of the case in this Court. The Springdale Defendants also filed such an appeal and the governmental defendants sought, and were granted, as stay. The Plaintiffs have now filed a motion to amend their Complaint. The Springdale Defendants have responded to the Plaintiffs' motion to amend (Doc. ## 75-76) and the Separate Washington County Defendant adopts and incorporates that response by reference, as if set forth word for word herein.

As set out in the Springdale response, the Plaintiff's motion to amend violates the stay ordered by the Court. Additionally, the Complaint makes no new allegations against Washington County and is, therefore, futile. Permission to file an amended complaint may be denied when the

proposed amendment would be futile. *See Knapp v. Hanson*, 183 F.3d 786, 790 (8th Cir. 1999). Denial of a motion for leave to amend on the basis of futility is proper if the court finds that the amended complaint could not withstand a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Zutz v. Nelson*, 601 F.3d 842, 850-51 (8th Cir. 2010). Since the Court has already made that finding with respect to the claim(s) against Washington County and since the proposed amended complaint makes no new allegations against the County, the Plaintiff's proposed amended complaint is futile as a matter of law and their motion to amend should be denied.

Respectfully submitted,

WASHINGTON COUNTY, ARKANSAS;
RICK HOYT, in his individual and
official capacities; and STEVE ZEGA
in his official capacity, *Separate Defendants*
RAINWATER, HOLT & SEXTON, P.A.
P.O. Box 17250
6315 Ranch Drive
Little Rock, Arkansas 72222-7250
Telephone (501) 868-2500
Telefax (501) 868-2505
Email: owens@rainfirm.com

By: /s/Jason E. Owens
Michael R. Rainwater, #79234
Jason E. Owens, #2003003

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of November, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will notify all counsel of record.

/s/ Jason E. Owens
Jason E. Owens